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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,282	03/25/2002	Frank Hofmann	1941	9040
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			EXAMINER WOZNIAK, JAMES S	
			ART UNIT 2626	PAPER NUMBER
			MAIL DATE 05/21/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: FRANK HOFMANN and TORSTEN MLASKO

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Application No. 10/030,282  
Technology Center 2600

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Mailed: May 21, 2009

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Before ERIC W. HAWTHORNE *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 12, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

### AMENDMENT AFTER FINAL

A review of the file indicates that on August 21, 2008, Appellant filed an Amendment After Final in response to the Final Rejection mailed May 19, 2008. It is not clear whether this Amendment has been considered because an Advisory Action has not been mailed. Clarification from the Examiner is required.

If the Examiner finds that the Amendment After Final should be entered, then the Examiner should mail an Advisory Action indicating entry. The Examiner should also indicate the correct status of the “Status of Amendments” section for Examiner’s Answer mailed November 25, 2008. No further action would be required.

However, if the Examiner finds that the Amendment After Final should not be entered, then the following applies:

### APPEAL BRIEF, CLAIMS APPENDIX

A review of the Appeal Brief filed August 21, 2008, reveals that claim 2 in the Claims Appendix of the Appeal Brief is not consistent as amended in the last entered amendment filed on March 31, 2008. The Claims Appendix assumes entry of the concurrently filed Amendment After Final which amended claim 2.

The copy of the claims should be in proper format and should not include any markings such as brackets or underlining except for claims in a reissue application in accordance with 37 CFR 41.37(c)(1)(viii). Furthermore, the Claims Appendix cannot assume entry of After Final Submissions for which an Advisory Action (or other Office communication) has not advised of entry. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for

details.

Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

(1) to appropriately respond to the Amendment After Final filed August 21, 2008;

(2) if the Amendment is entered, then the Examiner should indicate so on a PTO-303. The Examiner should also indicate the correct status of the "Status of Amendments" section for the Examiner's Answer mailed November 25, 2008; or

(3) if the Amendment is not entered, then the Examiner should indicate so on a PTO-303. The Appellant should submit a corrected Claims Appendix which reflects the claims as of the last entered amendment. An entire brief is not necessary, only the sections needing correction;

(4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/saw

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